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August 22, 1996

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**VIA HAND DELIVERY**

William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20544

Re: Ex Parte Conversation on FCC 96-192; GC Docket No. 96-101

Dear Mr Caton:

Pursuant to the Federal Communications Commission's ("FCC") Rules, this letter relates a conversation held between the undersigned and Mr. Lawrence Spiwak of the FCC on 19 August 1996, in which the undersigned telephoned Mr. Spiwak to make an inquiry as to the status of FCC decision-making on the above-referenced dockets, particularly with regard to whether the FCC would entertain applications for ETC status on behalf of "to be formed" subsidiaries.

As I discussed with Mr. Spiwak, a number of electric utilities have been involved in telecommunications activities for several years. Thus, their companies and internal decisionmakers are aware of the benefits of participating in telecommunications. For many other electric utilities that are just beginning to enter the telecommunications field, the decision to participate in the telecommunications market is often viewed by internal decisionmakers as a foray into an entirely new arena which must be proven to be in the interests of the company.

Electric utilities, like the large telecommunications companies we deal with regularly, are generally large organizations which must obtain approval from various levels within the organizations for most decisions and are accountable to their shareholders. Thus, there are policies often against the establishment of subsidiaries, which policies require that the proponents of a subsidiary establish a business case and go through several levels of corporate approval, ultimately to the Board of Directors. The process is designed to be, and is, a deterrent to the establishment of a subsidiary. A business case would be difficult to argue for a

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telecommunications subsidiary without authorization from the FCC and this could deter proponents entering the telecommunications business from moving forward, thus acting as a barrier itself.

I mentioned that to avoid this, and yet provide the FCC sufficient assurances that the electric utility would proceed promptly with the process to create a subsidiary, the FCC might modify its authorization process to allow for conditional ETC status for electric utilities with "to be formed" subsidiaries. Thus, the FCC would grant the electric utility ETC status conditioned upon the electric utility creating a subsidiary within a certain time period, *e.g.*, 60 days, and providing the FCC notification that the subsidiary has been created. If the electric utility failed to create the subsidiary within the designated period, it would need to provide sufficient justification to receive an extension. Failure to do so would self-activate a lapse of the conditional license.

Conditional approval is a common practice with the FCC. For example, in the satellite area, the FCC grants separate satellite systems companies, such as PanAmSat, licenses which are conditioned on the companies seeking coordination with the International Telecommunication Satellite Organization ("Intelsat"). Similarly, companies seeking orbital slots from the International Telecommunication Union are granted conditional licenses. Additionally, the FCC has issued conditional licenses to international private line resellers. The FCC granted ACC Global and Alanna conditional licenses which prohibited them from initiating service unless and until the United Kingdom determined that the United States was an equivalent country for purposes of international private line resale. Companies seeking submarine cable landing licenses have also been granted conditional licenses. Optel Communications, Inc. was granted a conditional submarine cable landing license to land and operate CANUS-1 in the United States. The grant of a final cable license was withheld until such time as the FCC found that Optel had demonstrated that U.S. companies had been provided a reasonable opportunity to participate in the installation, operation and maintenance of the cable system. Finally, the FCC has also granted authorizations subject to certain conditions in approving certain transactions such as the BT/MCI transaction and the purchase of a 79% interest in Telefonica Larga Distancia de Puerto Rico by Telefonica de Espana's subsidiary.

Thus, granting electric utilities conditional ETC status approval, pending the establishment of a subsidiary would be consistent with prior FCC precedent. Additionally, conditional ETC status merely grants authority to an electric utility to

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create a subsidiary which would be an exempt telecommunications company. It does not grant the subsidiary a license to provide telecommunications services as with some of the above-mentioned examples. Conditional ETC status only allows the electric utility a vehicle in which to proceed to participate in the telecommunications market.

Pursuant to my discussion of the above with Mr. Spiwak, he advised that the FCC had not reached a decision on the matter and that timing was not yet certain, but that the Commission may opine on the issue by mid-September 1996.

As required by the Rules, we submit this original and a copy notifying the Secretary's office of this conversation.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. O'Neill", written in dark ink.

Judith D. O'Neill

cc: Lawrence Spiwak, Esq.